

SECOND REGULAR SESSION

SENATE BILL NO. 822

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3126S.01I

AN ACT

To amend chapter 144, RSMo, by adding thereto eleven new sections relating to controlled substance taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 144, RSMo, is amended by adding thereto eleven new sections, to be known as sections 144.530, 144.533, 144.536, 144.539, 144.542, 144.545, 144.548, 144.551, 144.554, 144.557, and 144.563, to read as follows:

144.530. As used in sections 144.530 to 144.563, the following terms shall mean:

(1) "Controlled substance", any drug or substance, whether real or counterfeit, as defined in section 149.011 which is held, possessed, transported, transferred, sold, or offered to be sold in violation of state law, except that the term shall not include marijuana;

(2) "Dealer", any person who illegally manufactures, produces, ships, transports or imports into the state or in any manner acquires or possesses more than twenty-eight grams of marijuana, or more than one gram of any controlled substance, or ten or more dosage units of any controlled substance which is not sold by weight;

(3) "Director", the director of the department of revenue;

(4) "Domestic marijuana plant", any cannabis plant at any level of growth which is harvested or tended, manicured, irrigated, fertilized, or where there is other evidence that it has been treated in any other way in an effort to enhance growth;

(5) "Marijuana", any marijuana, whether real or counterfeit, as defined in

section 149.011 which is held, possessed, transported, transferred, sold, or offered to be sold.

144.533. 1. There is hereby imposed a tax upon marijuana, domestic marijuana plants and controlled substances at the following rates:

(1) On each gram of marijuana, or each portion of a gram, three dollars and fifty cents;

(2) On each gram of a wet domestic marijuana plant, forty cents;

(3) On each gram of a dry domestic marijuana plant, ninety cents;

(4) On each gram of controlled substance, or portion of a gram, two hundred dollars; and

(5) On each fifty dosage units of a controlled substance that is not sold by weight, or portion thereof, two thousand dollars.

2. For the purpose of calculating such tax, an ounce of marijuana or other controlled substance is measured by the weight of the substance in the dealer's possession. The weight of the marijuana or controlled substance includes all material, mixture or preparation that is added to the marijuana or controlled substance.

144.536. 1. The director shall administer the collection of the tax imposed pursuant to section 144.533. All tax payments shall be made to the director, and shall be accompanied by a form devised and furnished by the director.

2. The director shall adopt a uniform system of providing, affixing and displaying official stamps, labels or other indicia for marijuana and controlled substances upon which a tax is imposed.

3. The director may promulgate rules and regulations necessary to administer and enforce the provisions of sections 144.530 to 144.563.

144.539. 1. No dealer may possess any marijuana, domestic marijuana plant, or controlled substance upon which a tax is imposed pursuant to section 144.533 unless the tax has been paid as evidenced by an official stamp or other indicia.

2. Official stamps, labels, or other indicia to be affixed to all marijuana, domestic marijuana plants, or controlled substances shall be purchased from the director. The purchaser shall pay one hundred percent of face value for each stamp, label, or other indicia at the time of purchase. Each such stamp, label, or other indicia shall only be valid for three months after its date of issuance. The director shall issue the stamps, labels, or other indicia in denominations in multiples of ten dollars. Any person may purchase any such stamp, label, or other indicia without disclosing such person's identity.

3. When a dealer purchases, acquires, transports, or imports into this state marijuana, domestic marijuana plants, or controlled substances on which a tax is

imposed pursuant to section 144.533 and if the indicia evidencing the payment of the tax have not already been affixed, the dealer shall have them permanently affixed on the marijuana, domestic marijuana plant, or controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.

4. Taxes imposed upon marijuana, domestic marijuana plants, or controlled substances pursuant to the provisions of sections 144.530 to 144.563 are due and payable immediately upon acquisition or possession in this state by a dealer.

144.542. 1. At such time as the director shall determine that a dealer has not paid the tax as directed pursuant to section 144.539 the director may immediately assess a tax based on personal knowledge or information available to the director; mail to the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax, penalties, and interest; and demand its immediate payment. If payment is not immediately made, because collection of every assessment made hereunder is presumed to be in jeopardy due to the nature of the commodity being taxed, the director may immediately collect the tax, penalties, and interest in any manner pursuant to section 144.563.

2. The taxpayer may appeal the assessment within fifteen days from the date of mailing of the notice or the date of personal service of the notice given pursuant to subsection 1 of this section, by requesting in writing a hearing by the director on the correctness of the assessment. The hearing shall be conducted in accordance with the provisions of chapter 536, RSMo. An appeal of the assessment shall not stay the collection of the assessment but shall stay the sale of real or personal property seized pursuant to section 144.563 until the director rules on the correctness of the assessment.

3. The tax, penalties, and interest assessed by the director are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the director with the court or any other certificate by the director of the amount of tax, penalties, and interest determined or assessed is admissible in evidence and constitutes prima facie evidence of the facts it contains.

4. In making an assessment pursuant to subsection 1 of this section, the director may consider a plea agreement or judicial determination made in any criminal case.

5. All taxes not paid to the director of revenue by the person required to remit the same on the date when the same becomes due and payable to the director of revenue shall bear interest at the rate determined by section 32.065, RSMo, from and after such date until paid.

144.545. Neither the director nor a public employee may reveal facts contained in a report or return required by sections 144.530 to 144.563. No information contained in such a report or return may be used against the dealer in any criminal proceeding unless independently obtained, except in connection with a proceeding involving taxes due pursuant to the provisions of sections 144.530 to 144.563 from the taxpayer making the return.

144.548. For the purpose of determining the correctness of any return, determining the amount of tax that should have been paid, determining whether or not the dealer should have made a return or paid taxes, or collecting any taxes pursuant to the provisions of sections 144.530 to 144.563, the director may examine, or cause to be examined, any books, papers, records, or memoranda, that may be relevant to making such determinations, whether the books, papers, records, or memoranda, are the property of or in the possession of the dealer or another person. The director may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the director or any examiner or investigator, the court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, or memoranda. The director may also issue subpoenas. Disobedience of subpoenas issued pursuant to the provisions of sections 144.530 to 144.563 is punishable by the circuit court of the county or city not within a county in which the subpoena is issued, or, if the subpoena is issued by the director, by the circuit court of the county or city not within a county in which the party served with the subpoena is located, in the same manner as contempt of court.

144.551. Any dealer violating the provisions of sections 144.530 to 144.563 is subject to a penalty of one hundred percent of the tax in addition to the tax imposed pursuant to section 144.533.

144.554. Nothing in sections 144.530 to 144.563 shall in any manner provide immunity for a dealer from criminal prosecution.

144.557. The director shall submit annually fifty percent of all moneys received from the collection of taxes and from assessments of delinquent taxes and penalties imposed pursuant to the provisions of sections 144.530 to 144.563 to the state treasurer, who shall deposit the entire amount thereof in the state treasury and credit the same to the general revenue fund of which one-half shall be for the purpose of and to be appropriated for funding the foundation formula, pursuant to the provisions of section 163.031, RSMo. The director shall remit annually fifty percent of all moneys received from the collection of taxes and from assessments

of delinquent taxes and penalties imposed pursuant to the provisions of sections 144.530 to 144.563 as follows:

(1) If the law enforcement agency which conducted the investigation is a county agency, the entire amount shall not be considered state funds and shall be deposited in the county treasury and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes; or

(2) If the law enforcement agency which conducted the investigation is a city agency, the entire amount shall not be considered state funds and shall be deposited in the city treasury and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes; or

(3) If the law enforcement agency which conducted the investigation is a state agency, the entire amount shall be deposited in the state general revenue fund to be appropriated to the state agency for use in law enforcement purposes; or

(4) If more than one law enforcement agency is substantially involved in the investigative process, the amount shall not be considered state funds and shall be distributed equally among the city, county and state law enforcement agencies involved and credited to the appropriate county and city special law enforcement trust funds and state law enforcement agency funds unless an alternate distribution is mutually agreed upon by the law enforcement agencies involved and submitted in writing to the director.

Funds received shall not be considered to be a source of revenue to meet normal operating expenses of law enforcement agencies.

144.563. 1. Whenever a taxpayer liable to pay any tax, penalty or interest assessed pursuant to section 144.542, refuses or neglects to immediately pay the amount due, the director may issue one or more warrants for the immediate collection of the amount due, directed to the chief law enforcement officer of any county or city not within a county commanding the chief law enforcement officer to seize and sell the real and personal property of the taxpayer found within the county or city not within a county to satisfy the amount specified on the warrant and the cost of executing the warrant. The director may also issue one or more warrants directed to any employee of the department of revenue commanding the employee to seize and sell the real and personal property of the taxpayer found anywhere within the state to satisfy the amount specified on the warrant and the cost of executing the warrant. A copy of the warrant shall also be mailed to the taxpayer at the taxpayer's last known address or served upon the taxpayer in person.

2. The chief law enforcement officer or department of revenue employee

shall proceed to execute upon the warrant in the same manner as provided for distress warrants pursuant to sections 136.180 and 136.190, RSMo, except as otherwise provided in this section. In the execution of a warrant issued to a department of revenue employee, the employee shall have all of the powers conferred by law upon a chief law enforcement officer. Any law enforcement officer may assist in the execution of a warrant if requested to do so by a department of revenue employee.

3. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a seizure and sale under any warrant.

4. A third party holding funds or other personal property of the taxpayer shall immediately, or as soon thereafter as possible, after service of the warrant on such third party, deliver such funds or other personal property to the chief law enforcement officer or department of revenue employee, who shall then deliver such to the director or the director's designee for deposit toward the balance due on the taxpayer's assessment pursuant to section 136.110.

5. The chief law enforcement officer or department of revenue employee shall proceed to levy, collect, and sell such property in the manner pursuant to sections 136.200 to 136.230, RSMo.

6. The taxpayer shall have the right to redeem real property within a period of six months from the date of the sale.

7. The director shall have the right at any time to issue alias warrants until the full amount of the tax, penalty, and interest is collected.

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